

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2840 OF 1996

Syndicate Bank, a body corporate)
constituted under the Banking Companies)
(Acquisition and Transfer of Undertaking)
Act, 1970, having its Head Office at)
Manipal in the State of Karnataka and)
a Branch Office at Worli South Branch,)
Mumbai 400 018.)...Plaintiff

Versus

Raam Raj Kalamandir, a sole proprietary)
concern through its proprietor)
Shri S. Rama Nathan, 302, Rose Apartment)
Juhu Church Road, Mumbai 400 049)
and also having address at 21, Giri Road)
T-Nagar, Madras 600 017.)...Defendant

Shri S.R.Shetty for the Plaintiff.

None for the Defendant.

CORAM : ABHAY S.OKA, J.
DATED : OCTOBER 30th, 2007.

JUDGMENT:

1. Though the defendant is served with the Writ of Summons and is represented by an advocate, written statement is not filed till today. On 09th October, 2007 time of two weeks was granted to the defendant to file written statement. As the defendant failed to appear and file written statement, on 23rd October, 2007, this Court directed that the suit should be set down in the category of "Undefended Suits for Exparte Decree".

2. Today when the suit is called out, counsel for the plaintiff is present. None appears for the defendant. According to the case of the plaintiffs the defendant is carrying on business of film production. Sometime in the month of April, 1993 the defendant approached the plaintiffs-bank with a request to grant temporary overdraft facility against the charge upon moveable and immovable properties. By letter dated 08th May, 1993 the defendant requested for grant of temporary overdraft facility to the extent of Rs.3,00,000/-. The plaintiff sanctioned the temporary overdraft facility to the extent of Rs.3,00,000/-. The defendant submitted a statement of assets to the plaintiffs in which he disclosed the properties held by him. The plaintiffs obtained valuation of the said properties from a valuer. The valuer valued the said properties at Rs.60.54,750/-. It is alleged that the defendant committed defaults in payment of amount under the temporary overdraft facility in the sum of Rs.3,00,000/-. Therefore, by advocate's letter dated 07th March, 1995 the defendant was called upon to pay the dues.

3. The defendant replied by letter dated 18th April, 1996 confirming the fact that he availed of the temporary overdraft facility. He forwarded a demand draft in the sum of Rs.25,000/- to the plaintiffs. On

04th June, 1996 the defendant paid a sum of Rs.15,000/- to the plaintiffs.

4. The claim in the suit is for recovery of the balance amount with interest as prayed and for various reliefs in respect of the properties which are allegedly charged for repayment of the amount.

5. The plaintiffs were permitted to prove their case by filing an affidavit. Accordingly, the plaintiffs have filed affidavit of Mr.K.V.Krishnarao, Manager and constituted attorney of the plaintiffs. By the said affidavit the plaintiffs have proved various documents which are referred to and relied upon in the plaint. In the affidavit it is stated that the defendant has paid a sum of Rs.10,000/- in the year 2005 and a sum of Rs.01,00,000/- in March 2006. The plaintiffs have also produced the original documents including letter dated 08th May, 1993 of the defendant requesting the plaintiffs to grant temporary overdraft facility of Rs.3,00,000/-. The statement containing particulars of the assets of the defendant is also filed on record.

6. The letter dated 18th April, 1996 sent by the Defendant has been produced on record. In letter dated

18th April, 1996 sent by the defendant there is a clear admission of the fact that the defendant had withdrawn a sum of Rs.3,00,000/- under the temporary overdraft facility. Alongwith letter dated 01st June, 1996 the defendant forwarded a demand draft in the sum of Rs.15,000/- to the plaintiff. The plaintiffs have also produced a certified extract of the temporary overdraft account of the defendant. Considering the averments made in the affidavit and the contents of the original documents produced on record, the claim of the plaintiff in the suit has been established. Therefore, this is a fit case for passing a decree by invoking rule 10 of Order VIII of the Code of Civil Procedure, 1908.

7. The plaintiffs have prayed for further interest at the rate of 23.5% per annum. Considering the facts and circumstances of the case, further interest will have to be awarded at the rate of 18% per annum.

8. In so far as prayers regarding relief in respect of moveable and immovable properties of the defendant are concerned, the same are not pressed by the plaintiffs.

9. Hence, I pass the following order:

(I) There will be a decree in terms of prayer clauses (a) and (h) with following modifications:

(i) The defendant will be given a credit for the payment of Rs.10,000/- made in the year 2005 and Rs.01,00,000/- in March 2006 and;

(ii) The further interest payable on the principal amount will be at the rate of 18% per annum from the date of institution of the suit till realisation or payment.

(II) The plaintiffs will be entitled to refund of court fees, if any, as per the rules.

(III) Certified copy is expedited.

JUDGE